IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.430 OF 2005

1. Gurumukh Singh
2. R.K. Dalal
3. J.P.Sharma
4. Gopakumar P.K.
5. Virendra Perakash

All residing at Seamen's Club
R.Kamani Marg, Mumbai.

6. V.S.Yadav
resident of 15 Nirmal Row House,
Mhada Colony, East of E.E.
Highway, Mulund (East),
Mumbai 400 081. Petitioners

vs.

1. Union of India, Aayakar Bhavan'
New Marine Lines, Mumbai.

2. Chief of Naval Staff having its
office at Naval Head Quarters
at Delhi.

3. Commodore Bureau of Sailors
having its office at Cheetah
Camp, Mankhurd, Bombay 400 058.

4. The Controller of Defence
Accounts (P) Draupat Ghat,
Allahabad, U.P. Respondents

Mr.Shyam Mehta with Mr.Satendra Kumar for the petitioners.

Mrs.S.V.Bharucha with Ms.A.S.Kaushik for the respondents.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 22nd November, 2006

ORAL JUDGMENT (Per F.I.Rebello,J.).

Rule. By consent heard forthwith.

2. Petitioners have served in the Indian Navy as Sailors. They have been discharged from service on compassionate grounds. In terms of Regulation 78 of the Navy (Pension) Regulations, 1964, hereinafter referred to as "the Pension Regulations", unless otherwise provided the minimum service which qualifies for service pension is 15 years. None of the petitioners have put in 15 years, but all of them have put in 14 years or more. Regulation 82 confers power to condone deficiency in qualifying service upto one year in each case, except the three categories set out therein. By the present petition, the petitioners are challenging the validity of pension Regulation 82(a). Regulation 82(a) is in respect of a sailor who is discharged at his own request. It is the case of the petitioners that once a person joins the services of the Indian Navy the sailor has to be enlisted initially as a sailor for a period of 10 years. Under the provisions of the Navy Act, 1957, Section 14, Officers and Sailors shall be liable to serve in the Indian Navy or the Indian Naval Reserved Force as the case may be, until they are duly discharged, dismissed, dismissed with disgrace, retired, permanently to resign or released. No officer is at liberty to resign his office except with the permission of the Central Government and no sailor shall be at liberty to resign his post except with the permission of the prescribed officer. The acceptance of any resignation shall be a matter within the discretion of

the Central Government or the officer concerned as the case may be. Officers who have retired or permitted to resign are liable to be recalled to Naval Service in any emergency in accordance with Regulations made under the Act. There are various modes of discharge from the Naval Services. One of the modes is under Regulation 280 which reads as under:

> "**Regulation 280. Discharge on compassionate grounds:**
>
> (1) Sailors may in exceptional cases, obtain their discharges in India on extreme compassionate grounds, that is to say, in cases in which it is clear that undoubted material hardship to the sailor or dependents is involved by his retention in the Service.
>
> (2) Discharge shall not be claimed as a right, however, and nothing in these regulations shall interfere with the power of the Government to suspend discharge on compassionate grounds or to refuse discharge in particular case."

3. Petitioners were initially engaged for a period of 10 years. In addition they had put in training period of 4 years as Artificer Apprentice. By letter dated 17.2.1998 the Government of India issued instructions for counting the full 4 years training period as Artificer Apprentice towards qualifying service for service pension. In the year 2000, Government of India, Ministry of Defence issued a directive dated 13.4.2000 to extend the benefit of service rendered as a Boy (i.e. service rendered prior to attaining the age of 17 years) for pension and gratuity. Eligible petitioners as such

are entitled to count their period of service as Boys as well as Artificer Apprentice service for counting the period for service pension. After counting those periods they are still deficient by less than one year to earn service pension. Deficiency period can be condoned by the Competent Authority under Regulation 82 of the Pension Regulations. Deficiency upto 180 days is condoned by the Commodore, Bureau of Sailors and deficiency from 181 days upto 365 days is condoned by NHQ(COP). Regulation 82 reads as under:

> "**82. Condonation of deficiency in service for eligibility to service/reservist pension.-** Except in the case of a sailor -
>
> (a) who is discharged at his own request, or
>
> (b) who is eligible for special pension or gratuity under regulation 95, or
>
> (c) who is invalided with less than fifteen years' service,
>
> deficiency in the service qualifying for service pension or reservist pension or gratuity may be condoned by competent authority upto six months in each case."

. Regulation 82(a) as such states that the sailors discharged at their own request will not be entitled for the condonation of deficiency period for service pension. The petitioners have annexed at Exhibit "A" their record of service and the shortfall. If the petitioners had served for 15 years or more and had been discharged after re-engagement on compassionate ground, they would be entitled to pension. Once a sailor joins

the Naval Service, there is no right for discharge and even in case of request for discharge on compassionate grounds it is subject to the discretion of the Competent officer. The first period of engagement is 10 years with one further extension of 10 years.

4. Petitioners state that once they had joined the Naval Service they are servicemen and have to be treated as servicemen for all benefits which other servicemen are entitled to. If other sailors are entitled for counting of service for pension in terms of the Pension Regulations there is no reason why persons like the petitioners who can complete the necessary period for service pension if the Regulation 82 did not except them, should be denied the same. Those eligible for pension constitute one homogeneous class and if sub-classes are to be created the same must satisfy the test of Article 14. The classification between sailors who have been discharged at their own request and the category of sailors and the other class of sailors who may be discharged on the ground of un-suitability, being incompetent or undesirable under Regulation 278 or a sailor discharged under Regulation 279 on the ground that his services are no longer required does not disclose any rationale criteria nor has any nexus with the object. These other categories even if they have not put in fifteen years of service but have put in fourteen years of service have the benefit of Regulation

82. It is therefore submitted that Regulation 82(a) to the extent that it denies condonation of deficiency in service to sailors who are discharged at their own request is clearly arbitrary and consequently void.

. It is further stated that sailors who are discharged at their own request could not be clubbed along with sailors who are eligible for special pension or gratuity under Regulation 95 or who is invalided with less than 15 years of service. In cases of clauses (b) and (c) of Regulation 82 sailors covered by that clauses are entitled to pension. Sailors covered by Regulation 82(a) alone are not entitled to pension if they do not complete 15 years. Therefore treating persons dissimilarly situated and/or clubbing the petitioners with a class of sailors who are drawing pension is arbitrary and violative of Article 14 of the Constitution of India.

. The submission of the petitioner therefore is that Regulation 82 (a) inasmuch as it prevents the Competent Authority from condoning deficiency in service for eligibility for pension is violative of Article 14 of the Constitution of India and consequently null and void.

5. Reply has been filed on behalf of the respondents. It is set out that the petitioners had sought premature

release on compassionate grounds to enable them to take up civil employment and therefore the petitioners are not entitled for condonation of deficiency period. The petitioners, it is pointed out, were engaged for 10 years on completion of four years of Artificer Apprentice period. They wished to be released from the service prior to the expiry of the engagement period to join a civil job. Reference is made to the various Regulations in the matter of discharge on compassionate basis. In The Naval Ceremonial Conditions of Service And Miscellaneous Regulations, 1963 there are several provisions for discharge of a sailor prior to expiry of engagement. One such provision is Regulation 280 on compassionate grounds. As the total service rendered by the petitioners falls short of the minimum stipulated qualifying service of 15 years, they are not entitled to pension nor are they eligible for grant of condonation of deficient period under Regulation 82(a) which clearly stipulates that condonation cannot be accorded to the sailor discharged at his own request on compassionate ground.

6. The contentions urged by the petitioners in challenge to Regulation 82(a) is as under:

(1) Regulation 82(a) is clearly arbitrary, unfair, unreasonable, discriminatory and ultra vires Article 14 of the Constitution of India. There is no basis

whatsoever to treat the class of sailors who have been discharged at their own request as separate class in the context of the grant of the deficiency in service. There is absolutely no intelligible differentia based on which the classification is made. The classification made does not disclose any intelligible differentia which distinguishes persons in this class from persons left out of that class.

(2) It is next submitted that in Regulation 82, those covered by Regulation 82(b) and (c) are a class of sailors who are entitled to the pension. Persons like Petitioners who are covered under Regulation 82(a) are the only class who are not entitled for pension. The clubbing therefore of two dissimilar class of persons; one who gets pension and the other who is not eligible, discloses that the classification made is arbitrary and/or including persons like the petitioners under Regulation 82 with those who are entitled to pension under Regulation 82(b) and (c) would disclose total arbitrariness and consequently violative of Article 14 of the Constitution of India.

7. Before we deal with the contentions, we may at once consider some judgments on the subject in order to appreciate the contention as urged. In **Raj Pal Sharma & ors. v. State of Haryana & ors., AIR 1985 SC 1263,** the question before the Supreme Court was the Rules made by

the Government of Haryana which provided for counting of service in the military for the purpose of seniority except in the case of those who had been released from military service on compassionate grounds. After considering the issue, the Apex Court observed as under:

> "In the instant cases the petitioners are all ex-military personnel. They have also been released from military service. All those released from military service constitute one class and it is not possible to single out certain persons of the same class for differential treatment."

. In **Sansar Chand Atri v. State of Punjab & anr., (2002) 4 SCC 154,** the issue before the Supreme Court was rules made by the State of Punjab, inviting applications for certain posts in the Punjab Civil Services (Judicial) Branch. The appellant before the Supreme Court also applied, but he was informed that he could not be considered as ex-serviceman as he had been discharged from the Indian Army at his own request. While examining this issue the Supreme Court observed as under:

> "Testing the provisions in this context we are of the view that a person in the army who has earned pension after putting in the requisite period of service before leaving the army whether at his own request or on being released by the employer or on any ground should be treated as an ex-serviceman who has retired from the army. Such treatment is to be meted out to all such persons irrespective of whether the nomenclature used is "relieved" or "discharged or "retired". If the contention raised on behalf of the Service Commission and the State Government that since the appellant has been discharged from the

> army at his own request, he cannot be treated as an ex-serviceman, is accepted then it will create a class within a class without rational basis and, therefore, becomes arbitrary and discriminatory. It will also defeat the purpose for which the provision for reservation has been made."

. From these judgments of the Apex Court, it would be clear that ex-servicemen whatever be their form of discharge are to be treated as one homogenous class. No doubt that it appears that in Sansar Chand Atri (Supra) the Supreme Court proceeded on the basis of servicemen who were drawing pension.

8. In **A.S.Gangoli (Group Captain) & ors. v. Union of India & ors., 2001(3) Mh.L.J. 752,** the issue before the learned Division Bench of this Court was denial of benefit of weightage of 7 years in respect of pensionary benefits and weightage of 5 years as regards gratuity, to officers who retired prematurely for absorption in public sector undertaking. They had put in 20/25 years of service. The respondents denied this weightage to Pilots who retired in public interest for joining public sectors whilst granting to others including those who retired at their own request. The learned Bench after considering the various provisions held that this would be unreasonable as there is absolutely no reasonableness in the classification made by the State nor is there any nexus with the object sought to be achieved by making such classification. The classification was held to be

totally without basis and clearly suffered from vice of discrimination.

. In **Brahamanand & anr. v. Union of India & ors., 2004(3) Bom.C.R.33**, the issue before the learned Bench of the Court was whether Regulation 85 of Pension Regulations (Navy), 1964 which provided for condonation of deficiency in service in a particular rank upto three months except in case of voluntary retirement was valid and legal. The learned Bench considered various provisions of the Regulations and the nature of appointment and discharge from Naval service. The Court was pleased to rely on the judgment of the Apex Court in **Union of India v. R.P. Yadav, A.I.R. 2000 SC 2252,** where the provisions of the Naval Act and Regulations were considered. The Supreme Court there held that there is no vested right in a member of the Naval Force to walk out from the service at any point of time according to his sweet will. The Court held that the position in law is clear that a sailor is entitled to seek discharge from service at the end of the period for which he has been engaged and even this right is subject to the exceptions provided in the Regulations. Such provisions, the Court held in their view, rule out the concept of any right in a sailor to claim as of right, release during subsistence of period of engagement or re-engagement as the case may be. Relying on this judgment and the nature of the appointment, the learned

Bench of this Court held that rejection of petitioner's representation for giving the benefit of Regulation 85 was unsustainable.

. We may at once note that under Regulation 85, a Competent Authority may, depending on the circumstances of the case, condone a deficiency of service in a particular rank not exceeding three months, except in a case of voluntary retirement. In the instant case under Regulation 82, condonation of service is permitted upto one year, except to a sailor who is discharged at his own request and two other categories who are in receipt of pension.

9. We may now deal with the first contention as raised on behalf of the petitioners. The right to discharge is in the hands of the respondents. In these circumstances is it open to the respondents to treat those who are discharged at their own request as a class by itself, distinct from those others who may be discharged by way of dismissal, unsuitability etc. but who are still entitled to get the benefit of Regulation 82. Regulation 278 of the Naval Ceremonial Conditions of Service and Miscellaneous Regulations, 1963 provides for discharge of a sailor who is unsuitable, incompetent or undesirable. Under Regulation 279, discharge S.N.L.R. (service no longer required) is in respect of those sailors amongst others whose retention would be

detrimental to the service, but has not recently committed a specific offence for which dismissal would be an appropriate punishment or against whom an adverse report has been forwarded in the post enrolment verification report. It would thus be seen that if persons similarly situated like the petitioners, are discharged from service on the ground of unsuitability, incompetence, undesirability or whose services are detrimental to the service even though they may not complete 15 years for the purpose of pension, but have completed 14 years, their cases are liable to be considered under Regulation 82 for counting of service for pension. In one case discharge may be by way of punitive measure and in the other case discharge is based on compassionate ground. Is it open to the respondents to treat a person whose service record may be meritorious yet deprive him of the benefit of condinuation of service for pension, whereas in case of officers with or without blemished record and who are undesirable, though they may have served for 14 years, but less than 15 years, yet give them the benefit of consideration of one year for service pension. The object of Regulation 82 is to condone deficiency of service for pension. Release on compassionate grounds need not necessarily be to obtain employment elsewhere as that could be one such case. Is the classification therefore of persons who are dismissed, discharged on account of unsuitability, incompetence, undesirability

into a distinct class and exclusion of those who have been released on compassionate basis, has a nexus with the object and/or in other words is it reasonable. Once the object is to condone deficiency of service for pension of those discharged from service then it is immaterial as to the nature of the discharge.

. In our opinion, the respondents have not been able to place any material for treating these two category of sailors as two distinct classes. Those engaged in the Navy as Sailors constitute one homogeneous class. As explained in R.P.Yadav (supra) once a Sailor is engaged such Sailor cannot claim discharge as of right during the period of engagement. It is true that the nature of discharge is different. However, discharge in the case of both the classes is at the discretion of the respondents. One has been discharged on compassionate ground and the other being undesirable. Yet the one discharged as undesirable is entitled to be considered for counting of period for pension and the other is not. In our opinion, the classification is unreasonable and even if reasonable has no nexus with the object which is counting of period for service pension. It is totally arbitrary and violative of the basic principle as contained in Article 14. In the matters of pension, where Sailors have completed the period of 14 years, there is no reason as to why such a person discharged on compassionate basis cannot have his case considered. It is not as if all persons discharged on compassionate

ground are excluded as the class from pensionary benefits. If such a Sailor has put in 15 years of service and is then discharged on compassionate ground, such sailor is entitled to pensionary benefits. Rule 82(a) of the Regulation to that extent is arbitrary.

10. The next contention which we may examine is whether clubbing the three categories of persons who are included in Regulation 82 of the Pension Regulations is reasonable. Those covered by Regulation 82(b) and (c) as set out are those who are either entitled to a special pension or who would be entitled to invalid pension. Excluding those two categories will disclose a reason from the general category of those entitled to counting of service. This would be reasonable inasmuch as those categories are already drawing or are entitled to draw pension. The same is not in so far as Regulation 82(a) is concerned. The consideration of pension has to be seen on the touchstone of what the Apex Court has set out in Raj Pal Sharma & ors.(supra) and Sansar Chand Atri (supra) where all those who were in service are taken as one homogenous class and what is set out in the judgement in the case of R.P.Yadav (supra) where the Court has held that a sailor cannot as a matter of right, be entitled to be discharged from service or walk out from the period for which he is engaged, except after an order of the Competent Authority. If these factors are considered, we are

unable to find any reason as to why sailors who are discharged on compassionate ground are placed in the same class as those who are eligible for special pension or those who are entitled to invalid pension. Regulation 82(a) to that extent which treats those discharged at their own request in the same class as the two other categories who are drawing pension, to our mind, is totally arbitrary and/or unreasonable and does not disclose any germane reasons for clubbing two distinct and disparate groups into one class for excluding deficiency in service for eligibility for pension. For all the aforesaid reasons, in our opinion, Regulation 82(a) of the Pension Regulation is clearly violative of Article 14 of the Constitution of India and consequently, null and void.

11. Once we come to the conclusion that Regulation 82(a) is null and void, then the case of the sailors who are discharged at their own request, will have to be considered by the Competent respondents in terms of Regulations or Rules that are in force. We have noted at Exhibit "A" the shortfall for pension in so far as the petitioners are concerned. They range from 16 days to 7 months and 24 days. All of them are entitled for consideration.

12. We, therefore, direct the respondents that within sixteen weeks from today, to consider the case of all the petitioners for the purpose of condoning the

deficiency in service and the pass appropriate orders according to law. If the deficiency is condoned then to pass appropriate order as to service pension.

. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)